IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 119 OF 1999

Shankar Dhondu Walkar & Anr. .. Petitioners

versus

Mahadeo Gauroji Patil & ors. .. Respondents

...

Mr.Abhijeet Rane i/b Madhav Jamdar for petitioners

Mr.I.A. Patel for respondent no.1.

**CORAM : D.G. KARNIK, J**

**DATED : 4th September 2006**

**P.C.:**

1. This Contempt Petition is filed alleging that the respondent has committed breach of the order of injunction passed by this Court on 7th April 1998. In civil revision application no.406 of 1998. Therein this Court granted an injunction in terms of prayer clause (c) which reads as follows:-

> "Pending the hearing and final disposal of this Civil Revision Application, the Respondent no.1 - Original Defendant no.1 his friends, representatives, servants and mason etc. be restrained by order of injunction of this Hon'ble Court from carrying out any new construction beyond the area of the original plinth of original house in grampanchayat property No.175 of Village Jamsande, Tal.Deogad"

According to the petitioner in breach of this order, respondent no.1 carried out the construction beyond the plinth and thereby committed a contempt of the court.

2. A bare perusal of clause (c, in terms of which an injunction was granted, w ould show that there was no absolute ban on the respondent no.1 from carrying out the construction but he was restrained from carrying out construction beyond the area of the original plinth of the original house of the gram panchayat property no.175.

3. In this Contempt Petition, petitioner has not filed on record sanctioned plan of the old construction on the grampanchayat property no.175. In the absence of a plan of the old construction on grampanchayat property no.175, it is not possible to

even prima facie say that the respondent has carried out construction beyond the existing plinth. The petitioner did not apply to the trial court for appointment of a Court Commissioner after the order of injunction dated 7th April 1998 to record what was the original plinth area and what was the plinth area of the new construction made by the respondent. There is nothing on record to show that the new construction made by respondent no.1 is beyond the previously existing plinth which existed on grampanchayat house no.175. In the absence of even prima facie material to show that respondent no.1 carried out the new construction beyond the original plinth, it is not possible to hold him guilty for contempt. In the circumstances, Contempt Petition is dismissed summarily.

**(D.G. KARNIK, J)**